

General remarks

Claims 28 and 29 are all the claims pending in the application. Claim 28 has been amended.

Claim amendments

The amended claims 28 and 29 have been modified to correct various typographical and other errors that the examiner identified in his October 6, 2009 office action. In addition, claim 28 has been modified as follows, with reference to the inventor's Provisional Patent Application filed August 21, 2000 (Application number 60/226642) (Note that references to page numbers in this section below in inventor's Provisional Patent application correspond to page numbers that are displayed when inventor's Provisional Patent Application is viewed as a PDF document in Adobe Acrobat Reader Version 9):

Claim 28, sentence 1: A method for conducting a real estate transaction between a host computer, a real estate buyer, one or more real estate sellers and two or more of the real estate sellers' brokers, the method comprising:

Claim 28, sentence 2: submitting by each of two or more of said real estate seller's brokers to said host computer property listing data related to a single property;

Provisional Patent Application references:

a. *"submitting by each of two or more said real estate sellers' brokers..."* refer to: i) page 5, para 1, sent 1 "real estate broker firms", ii) page 5, para 1, sent 3 "about such property to brokers who list the property", iii) page 5, para 1, sent 4 "permits brokers to offer a discount that makes a particular broker more price competitive than others", iv) page 5, para 1, sent 1 "...access a cross section of real estate listings offered at a fixed or minimum commission fee discount, plus get a monetary rebate when they close a deal with a particular firm", v) ii) page 5, para 1, sent 2 "...matching broker firms", vi) page 6, para 4, sent 3 "Exclusive listings represent a small fraction of all available listings"

b. *"listing data related to a single property"* refer to: i) page 5, para 1, sent 3 "a piece of real estate", ii) page 5, para 4, sent 2 "This method will fence out full fare clients who prefer to use particular brokers, rather than be forwarded to an unknown broker who has listed a particular property", iii) page 6, para 3, sent 1 "Each broker knows that they share access to the same list of property available"

Claim 28, sentence 3: agreeing upon a transaction fee by each of the said real estate seller's brokers and said host computer for each of said property listing data related to each said single property submitted to said host computer, to be paid to said host computer by each of said real estate seller's brokers for selling or renting said property, which amount may be a fixed amount or a percentage of the selling or rental price of the said single property;

Provisional Patent Application references:

"agreeing upon a transaction fee ..." refer to: i) page 7, para 2, sent 1 "currently no way for real estate broker firms to discount their commission fee, and offer a discount that makes a particular broker more price competitive than others" ii) page 7, para 3, sent 1 "a broker firm may list a property at a discount that may preserve a profit calculable in advance that makes them price competitive, iii) page 7, para 4, sent 1 "... a cross section of real estate listings offered at a fixed commission fee minimum discount"

Claim 28, sentence 4: assigning by said host computer a code to each of said property listings data submitted by said real estate sellers' brokers to allow said host computer to identify which of said real estate seller's brokers submitted each of the said property listing data; said property listing data includes a type of discount or rebate offered for a successful procurement of the property;

Provisional Patent Application references:

"identify which of said real estate seller's brokers" refer to: i) page 7, para 5, sent 1 "provide the listing company a mechanism to track deals that are closed"

Claim 28, sentence 5: receiving property search criteria by said host computer from said real estate buyer related to said single property;

Claim 28, sentence 6: determining eligible properties by matching said property search criteria with said property listing data;

Claim 28, sentence 7: selecting by the real estate buyer one of said eligible properties displayed according to the said determination;

Claim 28, sentence 8: contacting by said host computer the said one or more real estate sellers to purchase or rent said selected eligible property;

Provisional Patent Application references:

"contacting by said host computer the said real estate seller" refer to: i) page 7, para 6, sent 1 "a system for transmitting a request for more information or to see or visit a real estate property"

Claim 28, sentence 9: procuring said selected eligible property by said real estate buyer from said one or more real estate sellers;

Claim 28, sentence 10: requesting payment, by said real estate buyer, of said discount or rebate from the said host computer;

Provisional Patent Application references:

"requesting payment, by real estate buyer, of said discount or rebate from host computer..." refer to: i) page 7, para 5, sent 1 "the listing company, which is charged a rebate upon the signing of a deal..."

Claim 28, sentence 11: notifying, by said host computer, said real estate seller's broker who submitted said eligible single property procured by said real estate buyer of said real estate buyer's request for the payment of said discount or rebate;

Provisional Patent Application references:

"notifying real estate seller's broker" refer to: i) page 5, para 1, sent 4 "it provides the property listing company with guaranteed notice via the rebate of that the deal with was closed...", ii) page 5, para 3, sent 1 "The listing company, which is charged a rebate upon signing of a deal, will be able to track which deals are closed"

Claim 28, sentence 12: paying, by said host computer, said real estate buyer the discount or rebate associated with said eligible property that was procured by said real estate buyer;

Provisional Patent Application references:

"paying said real estate buyer the discount or rebate" refer to: i) page 5, para 3, sent 1 "The listing company, which is charged a rebate upon signing of a deal, will be able to track which deals are closed", ii) page 7, para 4, sent 1 "get a monetary rebate when they close the deal with a particular broker firm", iii) page 7, para 5, sent 1 "listing company thereby charge broker a fee"

Claim 28, sentence 13: collecting, by said host computer, a transaction fee associated with said procured single property from said real estate seller's broker;

Provisional Patent Application references:

"collecting, by said host computer, a transaction fee..." refer to: i) page 5, para 1, sent 3 "charging a client real estate broker firm a... fee", ii) page 1 para 3, sent 1 "listing company will charge broker a fee", iii) page 7, para 5, sent 1 "listing company thereby charge broker a fee"

Claim 28, sentence 13: collecting, by said real estate seller's broker, a transaction fee associated with said procured single property from said real estate seller.

Provisional Patent Application references:

"collecting by real estate seller's broker a fee from real estate seller" refer to: i) page 5, para 1, sent 4 "real estate broker firms discount their fee", ii) page 5 para 3, sent 1 "charge broker firms a fee from the final commission", iii) page 5, para 4, sent 1 "broker firms leave their underlying fare structures intact" iv) page 5, para 4, sent 6 "real estate brokers charge a commission for the rental or sale of real estate" v) page 6, para 3, sent 1 "brokers charge the same commission fee as their competitors"

The rejection in view of Ingraham in view of Good

The examiner rejected all the claims under 35 USC § 103(a) as being unpatentable over Ingraham in view of Good. The rejection is respectfully traversed.

The examiner's rejection argues that Ingraham et al. (PGPUB: US 2001/0037280A1) recites the same general steps as Applicant, and that Ingraham's omission of a specific reference to "real estate seller's broker" found in Applicant's filing can be overcome by Ingraham's reference to a leasing agent and a clear reading of what Ingraham intended by the term "property owner." Although this may or may not be an accurate reading of Ingraham as of the date of his filing or 371(c) date, which is March 8, 2001, it certainly does not reflect what Ingraham submitted in his Provisional Application 60/188,099 on March 9, 2000 (hereinafter "Ingraham's Provisional Application"). Ingraham's Provisional Application has the following distinctions with the system that examiner described (page numbers are references to Adobe Acrobat page numbers when viewing Ingraham's Provisional Application as a PDF document, since it is not numbered on its own):

1. Ingraham's Provisional Application describes a system that is triggered by renters entering their own property information data, then lessors responding with corresponding available real estate (see page 2, under paragraph beginning "viva allows lessors...") By contrast, Applicant's Provisional Application describes the same system that Examiner outlined in his rejection, one that requires brokers to submit property listing data, followed by renters doing a search then contacting the real estate seller.

In support of this, see a) the first paragraph of Ingraham's Provisional Application that reads, "Unlike current online rental service, Viva lists renters rather than properties," and b) the statement of page two: "Vivas precise matching engine protects renters" and "Lessors can view all rental requests"

2. Ingraham's Provisional Application describes a system targeting owners and managers of multiple real estate that will be rented, not brokers for that real estate, and includes multiple references and images that allow the real estate sellers or lessors to re-advertise real estate, rather than brokers, after leases end. See pages 2, 19, and 101.

In support of this, Ingraham's Provisional Application requires that the listing party have the power to sign a lease and be billed for a successfully rented apartment. See p 26. Page 31 and 32 specifically show that the property owner or manager must use the system in Ingraham's Provisional Application and authorize an agent like a broker to use it, and that the broker is not the primary lister. Page 89 seems to say specifically that lessors in the specs are property owners and managers. (See #2 vivas service to you)

3. Ingraham's Provisional Application describes a system that automates not only the follow up inquiry about an advertised apartment, but also the offer to rent it. See images page 42.

Furthermore, even if examiner's reply was an accurate description of Ingraham's Provisional Application and that the term "Property Owner" can be said to include broker in its definition such that the two are functionally the same and that both can submit property listings, it does not solve the problem that Applicant's Provisional Application solves, wherein multiple brokers with access to a list of available properties list the same properties multiple times, with payments of fees and rebates following a strict order, as discussed below.

Ingraham's Provisional Application requires the property owner to list properties, and there is therefore just one party listing the property, the property owner, rather than multiple parties as described in the inventor's system. The reason for this is that a lease needs to be signed and completed to request the rebate offered as an inducement to use the system, and because property owner would only agree to pay one rebate per property, the property owner who is obligated to pay such rebate rather than brokers is the only party that can be a responsible party for signing such leases.

Thus, Applicant respectfully submits that the Examiner's characterization of Ingraham is more generous than what Ingraham's actual teachings warrant, since Ingraham's Provisional Application are completely different than Ingraham's 2001 patent application. Ingraham's Provisional Application may be more accurately summarized (see Ingraham's Provisional Application pages 2-4) as:

- a. Real estate sellers, and not brokers, enter property listing data into a computer system.
- b. Potential real estate buyers create a rental request.
- c. Computer system sends potential real estate buyers a customized rental offer by email.
- d. Real estate sellers and real estate buyers communicate by email.
- e. Computer system creates an offer to rent the real estate (see p 42).
- f. Real estate buyer and seller manually execute a lease.
- g. Real estate buyer notifies computer system, which bills real estate seller a transaction fee.

Note that Ingraham's Provisional Application doesn't rely on a rebate system to confirm a rental is completed so that it can bill the real estate seller. Rather per page 56 it confirms a renter's credit worthiness via an online check, and when a renter agrees to rent, viva guarantees the lease with the lessor, and therefore can bill its 30% of one month rent (rather than rely on the rebate request to trigger this billing).

Applicant respectfully points out that Ingraham's Provisional Application lacks any teaching or suggestions as to the dynamics of two or more of said real estate seller's brokers to said host computer property listing data related to a property two or more times, and the steps that follow this. Also, its order of payments is different than what is presented in Inventor's application as discussed below in more detail.

The combined teachings of Ingraham and Good compared with independent claim 28

Examiner furthermore argues that Good's disclosure of the relationship between the broker, tenant and real estate seller, whereby a broker is a property owner who may submit property listing data would make it obvious that broker, rather than real estate seller, could submit the property listing data since there are a limited number of responsible parties to rent or sell property. Examiner writes that while Ingraham omits reference to payment of a transaction fee from real estate seller to real estate broker and thus the nature of the relationship between real estate buyer, real estate seller and real estate seller's broker, Good discloses that payment of a transaction fee from real estate seller to a broker upon completion of a real estate buyer procuring a property would have been obvious as an incentive to real estate seller to rent or sell more properties.

Notwithstanding the Examiner's remarks, Applicant respectfully points out that Ingraham's Provisional Application and Good could not possibly be thought by the artisan of ordinary skill to be combinable and that both describe a system and order of payments entirely different than what Inventor's Application describes.

The payment system, who is paid and when each party is paid, described by Inventor in his Provisional Application is entirely different and has no comparable reference in the systems described by both Ingraham and Good. Specifically, Inventor describes a system where the following payments occur, in this order:

1. Payment by host computer to real estate buyer of a rebate or discount associated with an eligible property, followed by
2. Payment by real estate broker to host computer a transaction fee associated with the procured property, followed by
3. Payment by real estate seller to real estate broker a transaction fee associated with the procured property.

In addition, figures provided in Good seem to show a system controlled by a single broker, unlike the system described by Inventor. See:

Para 1: reference is to one broker, rather than "any" or "a" miscellaneous broker

Para 26: a broker computer system is a system used by a broker, seems refer to a single broker use

Para 52/53: this obviously describes a system that is operated by a single broker, and won't function with more than one broker. Last 2 sentences of 52 shows how a brokerage agreement is created "specific to the tenant and apartment complex" after tenant identifies an apartment to rent, then after apartment owner and tenant sign it, is forwarded to broker by the apartment owner. Apartment owner does this since he knows that tenant will claim a rebate from the broker. Broker uses this system to charge a commission to landlord. This system is not capable of dealing with multiple brokers since if multiple brokers listed the apartment on the same system, and an agreement that is specific only to tenant and complex is created, it would not be possible to identify which broker listed the apartment.

Para 54: same point-- an agreement specific to tenant and real estate doesn't function if multiple brokers list the same real estate. Also, the statement "the specific apartment complex by the potential tenant is selected" would have to be changed to account for the possibility of duplicate listings and would read something like: the specific apartment complex listed by a particular broker and selected by the potential tenant"

Para 58: "the broker will offer the access of its website" seems to reinforce that this describes a website set up by brokers individually, rather than a website that aggregates postings by multiple brokers.

Para 70: Again, reference to broker's website as the host for the system described here.

Para 75: seems to specifically create a method of ensuring that duplicate listings are not possible.

Para 79, claim 1a: they claim a system that allows the broker to present listings. We do not claim one that allows the broker to present listings, but instead one that lets the broker enter listings, with a system independent of the broker presenting listings. Claim 4 here doesn't

discuss duplicate listings and wouldn't function as described with duplicate listings. Item 4 also shows that they are claiming a system that requires a selection of a specific apartment complex which can not be a duplicate, rather than an apartment complex listing that can be a duplicate. This is repeated in claim 6 too (selection of specific apartment complex).

Conclusion and request for telephone interview

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the examiner feels may be best resolved through a personal or telephone interview, the examiner is kindly invited to contact the undersigned inventor at this telephone number: (202) 642-4892. Applicant herewith petitions the Director of the USPTO to extend the time for reply to the above identified Office Action for an appropriate length of time, if necessary. Any fee due under 37 CFR Section 1.17(a) is being paid by credit card with the attached form. The USPTO is directed and authorized to charge all required fees to this credit card, even if specific reference to such fee or amounts is not listed on the credit card payment fee. If additional fees requires the permission of applicant, applicant petitions the Director of the USPTO to contact inventor at (202) 642-4892 to amend the credit card submission form to make necessary changes.

Respectfully submitted

/Jeff Brauer/

Jeff J Brauer, Inventor

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